

# **Exhibit N**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- - - - -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.  
f/k/a General Motors Corporation, et al.,  
Debtors.

- - - - -x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York

June 1, 2010  
9:42 AM

B E F O R E:  
HON. ROBERT E. GERBER  
U.S. BANKRUPTCY JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Motion of General Motors, LLC for Entry of an Order Pursuant to  
11 U.S.C. Section 105 Enforcing 363 Sale Order

Transcribed by: Dena Page

1 A P P E A R A N C E S :

2 WEIL, GOTSHAL & MANGES LLP

3 Attorneys for Debtors and Debtors-in-Possession

4 767 Fifth Avenue

5 New York, NY 10153

6

7 BY: STEPHEN KAROTKIN, ESQ.

8 PABLO FALABELLA, ESQ.

9

10

11 KRAMER LEVIN NAFTALIS & FRANKEL LLP

12 Attorneys for the Official Committee of Unsecured

13 Creditors

14 1177 Avenue of the Americas

15 New York, NY 10036

16

17 BY: JENNIFER R. SHARRET, ESQ.

18

19

20 LAW OFFICES OF RUTLEDGE & RUTLEDGE, P.C.

21 Attorneys for Shane J. Robley

22 1053 West Rex Road #101

23 Memphis, TN 36119

24

25 BY: ROGER KEITH RUTLEDGE, ESQ.

1 NORRIS, MCLAUGHLIN & MARCUS, P.A.  
2 Attorneys for Sanford Deutsch and the estate of Beverly  
3 Deutsch  
4 875 Third Avenue  
5 8th Floor  
6 New York, NY 10022  
7  
8 BY: MELISSA A. PENA, ESQ.  
9  
10  
11 THE LAW OFFICES OF BARRY NOVACK  
12 Attorneys for Sanford Deutsch and the estate of Beverly  
13 Deutsch  
14 8383 Wilshire Boulevard  
15 Suite 830  
16 Beverly Hills, CA 90211  
17  
18 BY: BARRY B. NOVACK, ESQ.  
19  
20  
21  
22  
23  
24  
25

1 STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.  
2 Attorneys for Legal Representatives  
3 2323 Bryan Street  
4 Suite 2200  
5 Dallas, TX 75201

6  
7 BY: JO E. HARTWICK, ESQ. (TELEPHONICALLY)  
8  
9

10 ALSO PRESENT:

11 TERRIE SIZEMORE, Pro Se  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE COURT: We have GM on for 9:45 and it's a little bit early. Let me ask if people are ready to go on GM. Is everybody who would want to be heard on that -- I think I need to hear, in addition to the debtors, from Ms. Sizemore -- or, Dr. Sizemore. I hope you're on the phone. Are you on the phone, Dr. Sizemore?

COURTCALL OPERATOR: She has no appearance for that matter, Your Honor.

THE COURT: Okay, I heard you but not very loudly, so I'm going to ask you to speak up.

Mr. Rutledge?

COURTCALL OPERATOR: Your Honor? Your Honor?

THE COURT: Are you Dr. Sizemore? Oh, you came personally, after all. All right, very well.

MR. RUTLEDGE: Your Honor, I'm Roger Rutledge. I'm here from the Western District of Tennessee. I have a motion for appearance pro hac vice before the Court and would hope that the Court would grant that.

THE COURT: Of course. Welcome.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: And on behalf of the -- is it Deutsch litigants?

MS. PENA: Yes, Your Honor. Melissa Pena from the law firm Norris, McLaughlin & Marcus. I serve as local counsel for

1 Sanford Deutsch. I have with me, today, Mr. Barry Novack.  
2 He's an attorney in good standing with the State Bar of  
3 California. We just filed his pro hac papers today; I'd like  
4 to just move for his admission.

5 THE COURT: Of course. Welcome.

6 MR. NOVACK: Thank you.

7 THE COURT: Granted.

8 Okay, you know what, Patrick, could you turn off the  
9 blower, please?

10 Okay, folks, let's come on up, please, for the GM  
11 motion to enforce the 363 order. And then after everybody  
12 makes their formal appearances, I'll want everybody to sit  
13 down. I have some preliminary comments.

14 MR. RUTLEDGE: Does Your Honor want all the parties at  
15 counsel table that are responding or objecting to the motion of  
16 GM?

17 THE COURT: Yes, except only for the fact that if  
18 you're local counsel isn't going to be saying anything, it's  
19 optional for them. But I would like all of the counsel for Mr.  
20 Robley and the -- is it Deutsch? Forgive me.

21 MR. NOVACK: Deutsch, Your Honor.

22 THE COURT: Yes, the Beverly Deutsch family and also  
23 Dr. Sizemore to be up where they can be heard, although when  
24 you speak, I'm going to ask each of you individually to come to  
25 the main lectern, if you would, please. Okay.



1           Actually, I don't know if I need to make you folks  
2       repeat yourself. I have Mr. Rutledge, Mr. Novack and Dr.  
3       Sizemore, and for the debtor -- I'll take a formal appearance.

4           MR. KAROTKIN: For General Motors, LLC, Your Honor,  
5       Stephen Karotkin, Weil, Gotshal & Manges.

6           THE COURT: Okay, Mr. Karotkin. And with you?

7           MR. KAROTKIN: Is Mr. Bonomo (ph.) from General  
8       Motors, LLC. He's in-house counsel. And my colleague, Pablo  
9       Falabella, from my firm.

10          THE COURT: All right, very well. Okay, have seats  
11       everybody.

12          Folks, I want you to make your presentations as you  
13       see fit, starting with Mr. Karotkin. But when you do so, I  
14       want you to emphasize and focus on the particular questions and  
15       concerns that I'm going to identify for you now.

16          First, Mr. Rutledge, your -- the way you handled the  
17       commencement of the lawsuit, given your need to preserve your  
18       position and to tee it up for judicial determination was a text  
19       book example of the right way to do it in terms of acting  
20       responsibly. But I have some questions and concerns concerning  
21       your underlying motion -- or, your underlying objection. I  
22       want you to focus, vis-a-vis your notice position, in  
23       particular, as I want Mr. Karotkin to do when it's his turn, on  
24       the decision by Judge Cyr who -- of the First Circuit who, as  
25       we know, was a former bankruptcy judge because I think I need

1 to assume, for the sake of discussion, that Western is correct,  
2 but it says quite explicitly that that was a case in which  
3 notice by publication wasn't given, and that strikes me as a  
4 huge distinction.

5 I also need help from you, Mr. Rutledge, in focusing  
6 on the extent to which I can now hear argument on this when I  
7 ruled on the matter of notice when I issued the 363 order on  
8 the Fourth of July weekend last year because, unless I'm  
9 mistaken, there is an express finding on the matter of notice.  
10 And while I think that the facts could at least arguably be  
11 different if your client had already been known to Old GM or  
12 New GM, there is no basis in the record upon which I can make  
13 such a conclusion that either of the two GMs intentionally did  
14 not give you notice.

15 On the second issue, Mr. Rutledge, the successor  
16 liability issue, it seems to me that subject to your right to  
17 be heard, that you've got a res judicata problem, and that  
18 while I'd be amenable, I suppose, to your keeping your actions  
19 stayed as contrasted to dismissed until all appeals  
20 opportunities have been exhausted, I don't see how I can  
21 revisit the underlying issues in the second half of your brief  
22 for as long as my decision from last year and the district  
23 court affirmments say what they say they do and remain good law.

24 Dr. Sizemore, I need help in understanding the legal  
25 bases for your position, either the underlying contention or

1 the need for further discovery. It's not as fleshed out as the  
2 one that Mr. Rutledge filed in this court. And I have some  
3 material difficulties in seeing how your lawsuit can proceed  
4 given what the documents say.

5 Now, apropos what the documents say, that ties into  
6 the third of the objections to the motion, yours, Mr. Novack.  
7 As a preliminary matter, I need help from both sides because,  
8 Mr. Novack and Mr. Karotkin, it appears to me that neither side  
9 quoted what I understand to be the relevant language in 2.389  
10 which appears not in the first amendment which each of you  
11 quoted to me, but in the ARMSPA as it was in next to the sale  
12 order which seems to have different language in it than either  
13 side quoted. And what I would be tentatively inclined to base  
14 my ruling on would be the language in the ARMSPA as in next to  
15 the sale order in 2.389 that says, "accidents, incidents, or  
16 other distinct and discrete occurrences", which seems to me to  
17 be the key words that I've got to work off, rather than the  
18 "accidents or incidents first occurring language" that appears  
19 in the first amended MPA that each side quoted in its brief.  
20 Now, if I'm mistaken in that regard, don't be diplomatic,  
21 folks. Tell me so. But it seems to me that on the very unique  
22 facts that you have, Mr. Novack, I have to construe the ARMSPA  
23 in light of whatever the proper contractual language is, which  
24 I think is the one I just read.

25 And then I ask -- I need you folks to concentrate on

1       how a judge would construe the words "accidents, incidents, or  
2       other discrete occurrences" because those words seem to talk  
3       about what caused everything thereafter, in contrast to when  
4       the cause of action legally arose.

5               As my hesitancy in my articulating that suggests, I  
6       think the third issue was the closest of the three that I have  
7       here, but I want help from both sides on that. The two things  
8       that I need help from you the most on is that First Circuit  
9       decision in Western Auto Supply Company v. Savage Industries  
10      and the proper construction of the agreement.

11             Mr. Karotkin, you want to take a second, and then I'll  
12      hear from you first.

13             MR. KAROTKIN: Good morning, Your Honor. Stephen  
14      Karotkin, General Motors, LLC, for the moving party.

15             Your Honor, we believe that our motion and our  
16      pleadings and our responses are pretty much self-explanatory.  
17      As you know, there are six lawsuits involved. And just by way  
18      of quick background, only three responses were filed, to which  
19      you already alluded. R. J. Burn already has agreed to dismiss  
20      its lawsuit, and the other two respondents did not file any  
21      responsive pleadings.

22             I think that you've certainly put your finger on the  
23      issues that are relevant today with respect to the first item  
24      in Judge Cyr's decision, as you noted, and as we noted in our  
25      pleadings, there is certainly a very, very significant

1 distinction in that case as compared to the incident case where  
2 notice by publication was given; it was wide-spread. As Your  
3 Honor indicated, you expressly found that notice by publication  
4 was sufficient. There is no indication on the record or  
5 otherwise that General Motors, which is now MLC, had any actual  
6 notice of this claim. The lawsuit was not filed, I don't  
7 believe, until November 23rd, 2009, as indicated in Mr.  
8 Robley's pleading. And under the applicable law and rules,  
9 notice by publication was sufficient.

10 Moreover, Your Honor, as you surely know, the proposed  
11 financial difficulties of General Motors Corporation, the  
12 Chapter 11 filing, the sale that was going to take place before  
13 this Court at the end of June about a year ago was notorious  
14 and widespread in the papers. In addition to your finding that  
15 publication was sufficient and under those circumstances, as I  
16 think you've already indicated, we believe notice was  
17 sufficient. We believe notice complied with due process. The  
18 suggestion that we should have given notice to every single  
19 consumer who bought a General Motors vehicle is not supported  
20 by any authority that I'm aware of. It would have been  
21 virtually impossible to do, certainly in the context of the  
22 time frame we were dealing with. And again, we think the  
23 notice was more than adequate to comply with Mullane in due  
24 process.

25 I would also point out, and I think you indicated that

1 as well, that notwithstanding the issue of notice, the issue  
2 that has been raised by Robley with respect to selling free and  
3 clear of product liability claims was fully litigated at length  
4 in the three-day sale hearing before this Court. Your Honor  
5 ruled on the issue. Judge Gonzalez, as you indicated yourself,  
6 ruled on the issue. It was sustained by the Second Circuit,  
7 and as, again, you mentioned at the outset, we believe that  
8 that issue is res judicata. In addition to which it's --

9 THE COURT: Pause, please, Mr. Karotkin. I assume  
10 that New GM isn't prejudiced in any material way if that  
11 lawsuit remains stayed as contrasted to me ordering that it be  
12 dismissed until the time for all appeals has been exhausted?

13 MR. KAROTKIN: That's correct, and they have  
14 absolutely no objection to that.

15 THE COURT: All right, continue, please.

16 MR. KAROTKIN: And I think that, Your Honor, that  
17 really disposes with the Robley objection. With respect to  
18 Deutsch, again, you referred to the language that refers to  
19 "accidents, incidents or other distinct and discrete  
20 occurrences" that happened on or after the closing date. This  
21 clearly happened prior to the closing -- well prior to the  
22 closing. And again, as we mentioned in our pleadings, Your  
23 Honor, the fact that the cause of action may have arisen  
24 under -- I believe it was California law upon the death of the  
25 plaintiff in that action really is of no relevance. And we

1 think that the pure words of the contract dictate the result  
2 that this action must be dismissed as well.

3 THE COURT: Pause, please, because I didn't understand  
4 Mr. Novack to be arguing that we could ignore the contract, but  
5 I think that he was trying to argue that although the accident  
6 undisputedly took place before the closing, that the death was  
7 an incident. And because both sides were arguing different  
8 contractual language, I don't think you focused on "other  
9 distinct and discrete occurrence". Do you want to comment on  
10 whether the death can be regarded appropriately as an incident  
11 in contrast to an accident?

12 MR. KAROTKIN: I think, Your Honor, that the death, if  
13 it was the result of the accident, certainly was a byproduct of  
14 that, but it was not an accident or incident that occurred  
15 prior to the closing. And I think that it's very clear that  
16 whatever happened in the incident which gave rise to the cause  
17 of action -- or, the accident which gave rise to the cause of  
18 action clearly happened prior to the closing, as well as any  
19 distinct or discrete occurrences. All of that was the result  
20 of the accident, or allegedly the result of the accident that  
21 happened well prior to the closing, and I think that's the only  
22 logical interpretation of the purchase agreement and what was  
23 intended.

24 THE COURT: Okay, continue please.

25 MR. KAROTKIN: With respect to the Sizemore objection,

1 I think -- I think what Dr. Sizemore is saying is that she is  
2 entitled to discovery and should not be compelled to dismiss  
3 her lawsuit until General Motors, LLC has complied with  
4 discovery. Again, as we indicated in our pleadings, Your  
5 Honor, it's not a condition to your order or a violation of  
6 your order that General Motors be compelled to comply with  
7 discovery prior to or, as the condition to being dismissed from  
8 the lawsuit. To the extent that third party discovery is  
9 appropriate from General Motors, LLC, under the rules, under  
10 whatever procedures are appropriate in the non-bankruptcy court  
11 action brought by Dr. Sizemore, General Motors is obligated to  
12 comply with appropriate third-party discovery and will do so.  
13 It's my understanding that they already have furnished  
14 discovery to Dr. Sizemore, and all we are suggesting is that  
15 General Motors be dismissed and, again, to the extent that Dr.  
16 Sizemore believes she is entitled to discovery, that can  
17 proceed under the applicable rules of that non-bankruptcy court  
18 forum.

19 THE COURT: Well, if her action were dismissed, what  
20 would her basis for getting discovery to be. I'm a little  
21 puzzled by that. Saying that she has a right to discovery  
22 doesn't seem to make a whole lot of sense to me in light of  
23 what I understand you're looking for and what I would be -- or  
24 the variant, which is what I'm thinking about, which is staying  
25 that litigation until the matter of the underlying free and



1 clear order I issued either gets up to the Circuit or all  
2 appeals are dismissed. But I don't see how she has a valid  
3 lawsuit upon which to bring discovery or to seek it if I give  
4 you what you're looking for. Now, I assume she has a proof of  
5 claim in this court, and she can get third-party discovery  
6 against New GM to the extent that she can't get what she wants  
7 from Old GM, but I thought I heard you saying something  
8 different.

9 MR. KAROTKIN: Number one, we're not aware of Dr.  
10 Sizemore having filed a proof of claim against Old GM. We've  
11 checked the records, and there's no record of a proof of claim  
12 on file. If we are mistaken, I'm sure that Dr. Sizemore can  
13 correct me, but we have checked the docket and we don't see it.

14 Secondly, her lawsuit also was against -- or, is  
15 against a supplier. And to the extent that discovery would be  
16 appropriate as against General Motors, again, third-party  
17 discovery can proceed.

18 THE COURT: I'm with you now. Okay, continue.

19 MR. KAROTKIN: And Your Honor, unless you have other  
20 questions --

21 THE COURT: No. I'll give you a chance to comply and  
22 I'll give your opponents a chance to surreply.

23 MR. KAROTKIN: Okay, thank you, sir.

24 THE COURT: But let me hear next -- let me hear from  
25 Dr. Sizemore next, please.

1 DR. SIZEMORE: Thank you. I apologize; I'm a little  
2 nervous and I appreciate your patience.

3 He was incorrect in saying that the lawsuit is against  
4 a supplier. That's not correct. I believe I said in my  
5 objection that I was injured a little over two years ago, in  
6 January of '08, in a car accident; my airbag did not deploy. I  
7 felt I met the criteria for the bag to deploy. The Old General  
8 Motors Company sent a field investigator named Mr. John Ball  
9 (ph.) to inspect the vehicle. He promised me the details of  
10 the engineers' conclusions of his data. He inspected every  
11 aspect of the airbag.

12 I have been in conflict with General Motors, the Old  
13 and the New, for the details of that report since about March  
14 of '08. I wrote several letters to General Motors; they  
15 refused to respond to me at all. They said that a company  
16 named ESIS handled their product liability issues; I was to  
17 contact them. They've refused to give me the information. I  
18 contacted the Ohio Attorney General's Office because they have  
19 a consumer protection department. In doing that, they  
20 petitioned the information from the Old General Motors. The  
21 Old General Motors has supplied about this many pages of  
22 documents, but I have read every page that General Motors has  
23 supplied, and the information that I requested is not in those  
24 pages. When I received -- I received a crash data report from  
25 Mr. John Ball, some of the data that he collected is included

1 in here, as far as the deceleration event, the speed of my  
2 vehicle, the fact that the airbags were enabled at the time of  
3 my accident. But there's this hexidecimal fraction of this  
4 report that is computer gibberish to me and not understandable.  
5 So I asked for clarification of that and have never received  
6 it.

7 Also given to the Ohio Attorney General's Office was a  
8 report from an engineer named Mr. John Sprague (ph.). I  
9 contend that that report is fraudulent and it is not based on  
10 the information that John Ball obtained during the inspection  
11 because I was present during the inspection. And John Ball  
12 told me part of the information he had received: the speed of  
13 my vehicle, the impact, the reason that the airbags did not  
14 deploy. There's a picture that I was sent by General Motors in  
15 a collection of pictures that stated there was a class 2  
16 malfunction. The explanation of that is not present in the  
17 material that was sent to the Ohio Attorney General and to me.  
18 And I was frustrated, and I told the Ohio Attorney General that  
19 what was missing in the report, and so they petitioned General  
20 Motors again, and General Motors, again, refused to respond --  
21 the Old General Motors.

22 Also, I contacted federal representative Bob Latta's  
23 office. I have a message on my cell phone from that office  
24 that states that they contacted the new company, General Motors  
25 Company after the commencement of the bankruptcy. They said

1 they did not mention any of the issues of the bankruptcy and  
2 the fact that my accident occurred prior to the commencement,  
3 so it would not be their responsibility. Bankruptcy issues  
4 were never discussed. So what General Motors Company advised  
5 Federal Representative Latta's office to do was to contact  
6 Aesis, which claims to be General Motor's central claims unit.  
7 After all these -- and that was in August of '09. So I have  
8 August 18th as General Motors Company responding but never  
9 really providing any information.

10 So through frustration and through not knowing exactly  
11 how to proceed, I did file a claim against General Motors  
12 Corporation in civil court. And I was sent a letter by Ms. --

13 THE COURT: By that, you mean in Ohio?

14 DR. SIZEMORE: Yes.

15 THE COURT: Um-hum.

16 DR. SIZEMORE: Yes, where I purchased the vehicle.

17 THE COURT: Um-hum.

18 DR. SIZEMORE: For product liability. I was sent a  
19 letter by Brianna Benfield, who I understand works for the same  
20 firm that is present today, and she said in her letter that all  
21 actions against General Motors Corporation were void and that  
22 my action violated, I think, 362(a). I do have a copy of her  
23 letter. In her letter, she never offers me a proof of claim  
24 form and she never directs me to bankruptcy court. She just  
25 says that all claims are void, and if I didn't withdraw them,

1 then I would be in contempt of court. And I am basically a  
2 law-abiding citizen; I don't do things incorrectly  
3 intentionally. So I did withdraw them. And when I had a phone  
4 conversation with her, she explained to me that there was a new  
5 company called General Motors Company that had assumed  
6 responsibility. Whether that was correct or whether I  
7 misunderstood, I'm not sure. But she also said that my claim  
8 against ESIS was valid.

9 When I proceeded in civil court in Medina, Ohio, I had  
10 written to the judge that I claim to have a good heart but  
11 empty head and I understood that I could have possibly made  
12 some mistakes, but that I had made every honest attempt to  
13 gather the necessary information to not make those mistakes.  
14 Judge Kimbler was confused; I have a transcript of the hearing  
15 during -- on December 1st in Medina County, and he petitioned  
16 Mr. Popson, who was representing ESIS at the time, but ESIS  
17 told me that General Motors Company was paying him to represent  
18 Aesis. But Mr. Popson stated to the Court that ESIS was not  
19 the proper defendant because they did not manufacture the  
20 vehicle and they did not sell the vehicle to me. So according  
21 to Civil Rule 12(b)(6), I was dismissed. But I held the  
22 understanding that even an insurance company can be joined to  
23 civil litigation if it's appropriate or necessary. But that  
24 was disregarded.

25 THE COURT: Doctor, I want to interrupt you for a

1 second because I think you may be concerned that I'm going to  
2 take action against you for having violated the earlier  
3 injunction or anything like that, and I want to take that off  
4 the table both for you and the other two litigants who are  
5 here. I see the legal issue not as whether anybody is guilty  
6 of contempt or should be sanctioned or punished in any way but  
7 rather the extent to which the litigation should continue in  
8 light of what the sale order said and what the purchase  
9 agreement said.

10 So I'd like to ask you to turn to that. And I  
11 telegraphed some of the concerns that I have when I was  
12 commenting on the two lawyers who are representing their  
13 clients. And if you have anything to help me on that before  
14 they speak, I'd like you to do that, please.

15 DR. SIZEMORE: Okay, well, I appreciate your not  
16 wanting to punish me because that was one of the reasons that I  
17 came up here, because I don't feel that if I made a mistake, it  
18 was entirely my fault.

19 THE COURT: Of course, I understand that.

20 DR. SIZEMORE: So in all of this confusion, I filed an  
21 action for discovery in civil court because I wanted the  
22 details. My first question in the action for discovery --  
23 which I believe I met all of the requirements of the revised  
24 code required -- was that General Motors Company provide me  
25 with the details of the bankruptcy and if there's anything that

1 I needed to know to prevent being here in bankruptcy court in  
2 New York or violating any bankruptcy laws at all. And then  
3 there were several others; I have the list of questions with  
4 me. They were simple questions; I've asked the lawyers for  
5 General Motors if that action for discovery violated any  
6 bankruptcy laws or issues. They have not provided me with  
7 that. So I was under the gun for the statute of limitations in  
8 January of this year to file. So without the needed  
9 information, I filed against the company because I had read  
10 newspaper articles, talked to different people, had some, what  
11 I believed was misleading and false information from both the  
12 Old company and the New company as to where the liability was  
13 supposed to be. And so I did put the company as the defendant  
14 and then John Does were listed. There were no other defendants  
15 except for them.

16 Mr. Popson -- and I believe he did this in order to  
17 invalidate my action for discovery and get out of answering the  
18 questions properly -- filed an answer. And when he filed a  
19 motion to dismiss my action for discovery, he said that I had  
20 enough sufficient information to file a claim. But that  
21 statement, in my opinion, is false because I didn't have  
22 sufficient information and I apparently made a mistake by  
23 putting the company down as a defendant. But Mr. Popson  
24 made -- he did answer the complaint, and then he gave me verbal  
25 instruction to serve discovery request upon him according to

1 Civil Rules 33 and 34, which I said, if General Motors Company  
2 is not a legitimate defendant, I don't feel that I can serve  
3 discovery requests through 33 and 34, so I did not. I said if  
4 you are willing to answer discovery request, then please answer  
5 my action for discovery.

6 Well, he invalidated that action for discovery  
7 completely, but I still maintain that that was legally executed  
8 and did not violate bankruptcy laws, and so I'm in the ninth  
9 district because General Motors Company failed to comply with  
10 Civil Rule (a)(1) requiring them twenty-eight days --

11 THE COURT: Pause, please, Dr. Sizemore. I don't want  
12 to cut you off, especially since you traveled so far, but  
13 you're getting a little bit afield. I need you to concentrate  
14 on the bankruptcy issues that are before me and what the  
15 purchase agreement says. So when I -- when you continue, which  
16 will be in just a moment, I want you to focus on that, please.

17 Before you do, though, I would also like you to help  
18 me -- I had always assumed that a DVM is a veterinarian.

19 DR. SIZEMORE: Yes.

20 THE COURT: And an RN is a nurse. Do you have legal  
21 training? I saw your pleading. It looked like either you had  
22 at one time gone to law school or somebody with legal training  
23 had helped you.

24 DR. SIZEMORE: No, I've done research independently.  
25 I am medically trained. I have -- my background is completely



1 medical --

2 THE COURT: Okay.

3 DR. SIZEMORE: -- for over thirty years.

4 THE COURT: Fair enough. Then, you want to continue,  
5 please, with bankruptcy doctrine, cases, statutes, as to why  
6 you should win. For the purposes of the issues that are before  
7 me, I don't have the power to decide whether or not you were  
8 injured by a GM vehicle or whether GM did anything wrong.

9 DR. SIZEMORE: I understand that, and in all honesty,  
10 I guess my position is that I am very unsure of any of the  
11 bankruptcy issues. I feel that General Motors owed me, as a  
12 consumer -- and they did -- the attorney who was standing here,  
13 I believe I did receive some notification in the mail that  
14 really didn't make a lot of sense to me as far as the  
15 bankruptcy that happened because I had an '04 vehicle, and I  
16 now have an '07 vehicle. But my -- if I made a mistake, it was  
17 unintentional, and I don't know how to plead because if I -- I  
18 can't deny that I made a mistake because there's a possibility  
19 that I did. But I can't --

20 THE COURT: Well, you don't have to plead guilty or  
21 not guilty like you would if you were in a criminal court. I  
22 would suggest to you that you let the two lawyers speak because  
23 the two of them have more directly addressed the bankruptcy  
24 issues that I need to deal with.

25 DR. SIZEMORE: Okay.

1 THE COURT: Thank you.

2 Okay, may I hear next from Mr. Rutledge, please?

3 MR. RUTLEDGE: Thank you, Your Honor. I'm Roger  
4 Rutledge from Memphis, Tennessee, and I appreciate the  
5 opportunity to be before the Court this morning. I know that  
6 this case has been unbelievable; it took me a while before I  
7 found out that there was a single web site devoted solely to  
8 documents filed in this case. And it's just an amazing case.  
9 I know that the Court was faced with a tremendous  
10 responsibility in those forty days from the day that the  
11 petition was filed until the transaction that consummated the  
12 sale order and that, really, I want to acknowledge that the  
13 Court stepped up to the plate and did what needed to be done  
14 for the sake of the whole country, and especially in the face  
15 of a looming disaster. And I would submit, Your Honor, that  
16 this morning, the disaster has been averted, that we have an  
17 opportunity to go back and deal with some of the things that,  
18 at that time, would have been considered to be less  
19 significant, and to hopefully do the right thing, which is why  
20 I'm here.

21 I represent Shane J. Robley, a young man, twenty-seven  
22 years old --

23 THE COURT: Who I sense is a paraplegic, and I'm very  
24 sensitive to the personal circumstances of your client.

25 MR. RUTLEDGE: Thank you, Your Honor. He is, indeed,

1 a paraplegic, and after -- he was driving a GMC Jimmy which,  
2 along with a Chevrolet Blazer, has the worst rollover tendency  
3 ever recorded by the National Highway Traffic Safety  
4 Administration. This accident is one that definitely was  
5 tragic; that's all we can say about it. And after it happened,  
6 for probably the six months that ensued after -- it was  
7 November of 2009, the end of November, he was, for sixty days,  
8 in the intensive care unit of the hospital. And then, in the  
9 succeeding months, he was under treatment and learning how to  
10 live in a wheelchair.

11 And so, we come up to June the 1st, and the notice by  
12 publication. And I would not differ with counsel for GM, but  
13 under normal circumstances, notice by publication reaches most  
14 people in a bankruptcy case. It's commonly used, and I  
15 certainly don't take issue with the general acceptance of the  
16 certificate of publication that the Court made at the time of  
17 the entry of the order. But I would submit, Your Honor, that  
18 under the test of Mullane v. Central Hanover Bank and Trust  
19 Company and other authority, that the notice in this case was  
20 not reasonably calculated to reach Shane J. Robley or people  
21 like Shane J. Robley.

22 I took the liberty, Your Honor, of reproducing from  
23 the record at [www.motorsliquidation.com](http://www.motorsliquidation.com) the actual publication  
24 notices. It was published one time in these publications, four  
25 of which came out in Canada. And I would just submit to Your

1 Honor that the small type and the language of the notice was  
2 simply insufficient to give a person in Shane J. Robley's  
3 situation any kind of understanding that his rights were going  
4 to be just affected but potentially extinguished by the  
5 procedure that was taking place in June of 2009.

6 Your Honor, this is -- frankly, the Court, in June of  
7 2009, was faced with a hard case. And this case has the  
8 potential to be a classic illustration of the old axiom that  
9 hard cases make bad law. But we have the possibility, also, to  
10 go back and look at what has happened and make some good law in  
11 the aftermath. Certainly, at the time, it was a necessity  
12 to -- and this was all articulated in the ruling of the  
13 Court -- the exigencies of that -- or, the circumstances that  
14 the Court faced were so dire that to avoid potential  
15 liquidation of this huge company and all of the harm that would  
16 flow from that, it was appropriate to use the expedited  
17 procedure to solve the problem.

18 Similarly, it's appropriate at this stage, looking  
19 back on it, to say if we used an expedited procedure, and there  
20 were good reasons for doing that -- but if a man named Shane J.  
21 Robley was left out and was out in the cold, and if we live in  
22 a country that is ruled by procedural due process and that  
23 there was a problem there, that we can fix it. Now, the  
24 Court --

25 THE COURT: Pause, please, Mr. Rutledge.

1 MR. RUTLEDGE: -- the Court --

2 THE COURT: Pause, please. If GM knew back then that  
3 your client had already been injured and chose to use the  
4 publication route rather than a way that would get to him more  
5 directly, that kind of factual circumstance would have troubled  
6 me. But at the time of the sale hearing, am I right in my  
7 understanding that GM didn't know anything more about your  
8 client other than the fact that at one time, he had bought a GM  
9 vehicle?

10 MR. RUTLEDGE: I believe that is correct, Your Honor.  
11 At the time, Mr. Robley was, as I say, under medical care and  
12 had really not come to a full understanding of his position  
13 with regard to what had happened.

14 But just coming to the issue that counsel for GM made  
15 regarding the notice, he stated in argument that under the  
16 applicable rules, notice by publication was sufficient. Now,  
17 bankruptcy law makes it the responsibility of the party in  
18 bankruptcy, basically, the debtor-in-possession or the trustee,  
19 to see to it that adequate notice is given. It's not handled  
20 by the Court, as it was before 1978. So in this respect, the  
21 Court was really depending upon GM to do the job. As we heard  
22 this morning in argument by GM's counsel, they were depending  
23 upon the news media to do their job. They did one notice by  
24 publication in the newspaper and assumed that that was going to  
25 be picked up and everybody would know -- a product liability

1 would know that this hearing was going to take place in which  
2 he could possibly lose all his rights. I submit, Your Honor,  
3 that there is an analogous situation in which automobile  
4 manufacturers routinely contact owners of their vehicles, and  
5 that is the -- either the recall or the National Highway  
6 Traffic and Safety Administration issues orders from time to  
7 time directing companies to contact owners about a defect or a  
8 problem. And they routinely do it. Now, I submit, Your Honor,  
9 that in the case of notice in a bankruptcy proceeding, except  
10 for the haste that was called upon because of the particular  
11 circumstances facing the Court at that time, there was no  
12 excessive burden upon GM either financially or in terms of its  
13 capability of accomplishing such a feat to issue notice by  
14 mail. Failing that, at the very least, they could use the same  
15 type of notice that goes out in class action lawsuits,  
16 notice -- I mean, direct advertisements on the media,  
17 television, and something that came right out and said if you  
18 were injured in a GM vehicle, your rights could be terminated  
19 by this proceeding.

20 Now, I found it interesting that Dr. Sizemore received  
21 a letter from Brianna Benfield because, as we say in our  
22 filing, a letter -- we received a letter also. And I found it  
23 very interesting, also, that that letter did not enclose a  
24 proof of claim form or anything to try to give notice of where  
25 Dr. Sizemore stood or where Mr. Robley stood with regard to

1 these proceedings.

2 THE COURT: Pause, please. Did I understand you to  
3 say that you had a similar communication with her?

4 MR. RUTLEDGE: That is correct, Your Honor.

5 THE COURT: And she didn't tell you about the claims  
6 filing process either?

7 MR. RUTLEDGE: She did not, Your Honor.

8 THE COURT: And either by other means or otherwise,  
9 have you ultimately filed a proof of claim against Old GM on  
10 behalf of your client?

11 MR. RUTLEDGE: What I have done, Your Honor, is I  
12 contacted Ms. Benfield and I asked her if we could file a late  
13 filed proof of claim by consent. And I just received response  
14 to that last Friday.

15 THE COURT: And what did she say?

16 MR. RUTLEDGE: And she said no; she said that GM would  
17 not consent. So basically, we are here on behalf of Mr. Robley  
18 because this is his sole route of recourse, it appears, other  
19 than we will file and submit to the Court and seek the Court's  
20 consideration of a motion to allow a late filed proof of claim.  
21 Other than that, we have to do what we're doing today.

22 And Your Honor, what I -- I want to go down the list  
23 of the concerns that the Court has because they are the right  
24 concerns, and I want to address them. First, regarding the  
25 notice, in its response, GM states that the suggestion that the

1 analogous method of noticing a party, as I say, in the same  
2 method that is used in class action suits or in motor vehicle  
3 recalls, GM refers to -- calls that absurd, an absurd  
4 suggestion. But Your Honor, what is more absurd is to presume  
5 that those notices in those publications that ran one time  
6 would have reached those whose rights were being affected by  
7 GM's actions. So we would simply submit that under Mullane v.  
8 Central Hanover Bank and Trust and its Progeny, notice means  
9 that notice that is reasonably calculated to reach the person  
10 whose rights are being affected and gives that person an  
11 opportunity to be heard. This notice was published on June  
12 9th, even though the order went into effect on June 1st. And  
13 it referred to the deadline for filing objections. We  
14 articulate all this; I'm not going to repeat what we've said in  
15 our filing, Your Honor. But essentially, less than twenty-one  
16 days expired between the time that the notice was filed and the  
17 closing took place. The -- Mr. Robley, if he had happened to  
18 have read one of those publications and happened to read that  
19 small print in that notice, Mr. Robley would have had exactly  
20 nineteen days to get ready for the hearing, and fewer than ten  
21 days to even file anything. So is that reasonable notice for a  
22 young man who's living in Tipton County, Tennessee? We would  
23 simply submit, Your Honor, that it's not. And the consequences  
24 of a failure to give adequate notice are well understood under  
25 the law. And that's where the case the Court asked about, the



1 decision of Judge Cyr's in the Savage v. Western Auto case  
2 comes into play. Because as the Court said, or noted there,  
3 not only was there no publication notice, but there was no  
4 other form of notice because of the timing of events in that  
5 case. But the sale order and the sale agreement purported to  
6 do exactly what was done in this case, that is to say, cut off  
7 product liability claims.

8 And there are two very important distinctions that are  
9 to be made when you're dealing with a product liability claim.  
10 Distinction number one is that it's in a whole different stream  
11 of legal development that comes down from the Macpherson v. the  
12 Buick Motor Car case. It's a strict liability. The rights of  
13 consumers under this branch of the law cannot be waived even by  
14 them, and as we've quoted from the restatement of Torts Third  
15 in our filing, the law just simply does not uphold the  
16 termination of rights in a product liability case.

17 Similarly, Section 363 of the Bankruptcy Act (sic)  
18 states that a sale can be approved if it's not contrary to non-  
19 bankruptcy law. Well, Your Honor, non-bankruptcy law in the  
20 State of New York, this concept of the exceptions to the  
21 general rule that you can pass assets free and clear of liens  
22 is actually more developed in the law of the State of New York  
23 and the law of the State of Delaware than any other state in  
24 the union, but it's a very common --

25 THE COURT: Well, pause, please, Mr. Rutledge, because

1 the arguments you're making have an amazing resemblance to  
2 those that were made by Mr. Jakubowski and perhaps others  
3 before me in June of '09. And he's a pretty good lawyer, too,  
4 and he made those points. And I ruled on them, and at least so  
5 far, that's been affirmed on appeal. Assuming, for the sake of  
6 argument, that under either Tennessee law or New York law or  
7 whatever law might ultimately be determined to apply to the  
8 underlying tort claim that there might otherwise be successor  
9 liability, don't we have a res judicata issue here?

10 MR. RUTLEDGE: Your Honor, we would have a res  
11 judicata -- I don't want to give the impression to the Court  
12 that I'm asking the Court to go back and rewrite the order that  
13 was entered in this case. It's not necessary to do that. The  
14 MPSA, the underlying agreement itself states that these claims  
15 will be passed -- or, kept by the Old GM, the claims for  
16 accidents preceding July 10th of 2009. Those claims would be  
17 passed to Old GM, and assets would be taken free and clear of  
18 those, and this is a direct quote from the MSPA, the master  
19 agreement, "to the extent permitted by law." So I'm simply --  
20 I'm here asking the Court to uphold what has been done. The  
21 law does not permit, under the facts presented in Mr. Robley's  
22 case -- I'm not arguing -- I don't know who Mr. Jakubowski is;  
23 I've seen his name in the pleadings -- and frankly, Your Honor,  
24 I took from the Court's ruling the -- what was res judicata and  
25 what was not. Now, there's no question, the Court, in its

1 decision, has closely analyzed, A, whether a product liability  
2 claimant is a person with an interest in the case, and that's  
3 an interesting issue of itself; B, the Court did textual  
4 analysis of the Bankruptcy Code to determine what is the nature  
5 of an interest and whether the provisions of Section 363 would  
6 give the Court the authority to approve the agreement as it was  
7 written. And we take no exception to that; the authority is  
8 there. The question is whether we're going to follow the law  
9 or not. And we humbly submit that the agreement itself says  
10 "to the extent permitted by law", these claims would not pass  
11 to the New GM.

12 We simply say the law does not permit that to occur  
13 under the facts presented in Robley's case for two reasons.  
14 Number one, he did not receive adequate notice. What we're  
15 dealing with is something akin to a knowing and intelligent  
16 waiver of rights. Before you can do that, you have to know  
17 that there's an issue and what can take place and have an  
18 opportunity to be heard.

19 And then secondly, there is this confluence of two  
20 streams of law: one, product liability law, the other,  
21 commercial contract law. Most of what the Bankruptcy Code and  
22 the bankruptcy court deals with are claims that are rooted in  
23 commercial law. But product liability law is a different  
24 animal, and there are -- the authorities that we cite in our  
25 filing make it clear that it is to be accorded a different

1 treatment. Now, and under the facts of this case, there is no  
2 doubt that we have a continuation of the existing entity in a  
3 new form, that it is a de facto merger or consolidation because  
4 the Old GM disappears, and in its place is New GM. And it's  
5 very -- I found it interesting in preparing for this proceeding  
6 to note that the president -- and I think the Court refers to  
7 this as well in the proceedings -- the president -- of course,  
8 you know, the United States government, the Treasury was very  
9 deeply involved in the process -- the president, in talking  
10 about what the government wanted to have happen, says, or said,  
11 "What I am not talking about is a process where a company is  
12 simply broken up, sold off, and no longer exists." In other  
13 words, the vision, from the beginning, the vision that was  
14 built into all the proceedings was that there would be  
15 continuity, that the value wouldn't be lost, that the  
16 trademarks, the trade names, the product lines, and so forth  
17 would continue. The business would be done -- all the UAW and  
18 nonunion workers were taken over into New GM. And under those  
19 clear rules of law relating to the exceptions to the general  
20 rule that assets can be taken free and clear of claims, in the  
21 face -- under the law, it's not permitted extinguish Robley's  
22 cause of action under the facts presented here. And similarly,  
23 it's not permitted because it's a products liability claim.  
24 Even Robley could not waive that claim under the law as it  
25 exists today. So it's not a commercial law claim, it's not

1 like a contract claim or those matters having to do with rents  
2 and leases and the equity in the company and all those things  
3 that are -- basic pension claims that are dealt with in this  
4 case, this is a particularly different category of claims, and  
5 under the facts presented here, we submit that the Court has to  
6 take into consideration these differences.

7 Your Honor, the issues of res judicata might be  
8 pertinent if we were asking the Court to rewrite the order or  
9 rewrite the master agreement. We're not doing that. We're  
10 just saying under the facts in this particular case, if you  
11 apply them according to their very terms, that Mr. Robley's  
12 claim can lawfully be brought against the New GM and that it  
13 should not be dismissed, or he shouldn't be ordered to dismiss  
14 it. And so I can only say that if another lawyer stood here  
15 and made similar arguments, I can only say that in the ruling  
16 of the Court, there is no analysis of the exceptions to the  
17 general rule; there is no real finding that in a products  
18 liability matter, that the facts presented in this case having  
19 to do with product line and continuation and what I've just  
20 covered that there's no finding that those exceptions don't  
21 apply; let me put it that way. The facts clearly comport with  
22 the decisions we've cited in our filing that apply those  
23 exceptions under the facts presented in this particular case.  
24 So I'm, again, I'm not arguing for anybody but Shane J. Robley,  
25 but he is in the position in which without the finding of the

1 Court on this motion and objection which we've filed that would  
2 enable him to go forward in this case, he's without recourse.  
3 And that is simply unjust. And we're here seeking justice for  
4 Mr. Robley.

5 The Court has indicated that the Court would be  
6 amenable to a stay pending appeal, and I was going to ask for  
7 that if the Court is inclined to rule against our objection  
8 because this Court and the Second Circuit have both noted that  
9 there is a conflict among the circuits as to this issue of  
10 successor liability and the extent to which it can be  
11 extinguished. And so it is a matter of vital importance to Mr.  
12 Robley, and so I would ask the Court to give us a chance to do  
13 that, if we have to.

14 But I would submit, Your Honor, that this Court has  
15 the power to interpret its own orders; this Court has the power  
16 to rule further on particular facts and circumstances presented  
17 in a matter of such as we're hearing today. I would submit,  
18 Your Honor, that the contentions of GM that this particular  
19 issue regarding res judicata or concerning successor liability  
20 in a case like Mr. Robley's is res judicata on the record does  
21 not appear. In other words, what the record shows is the Court  
22 found that it had the power to approve that provision and  
23 approve the agreement with those provisions in it. And  
24 certainly, the drafters of that agreement did all they could to  
25 cover the waterfront; there's no question about that. So the

1 Court found that it has the power under Section 363 to do that,  
2 but Section 363 is not a federal preemption statute. In fact,  
3 there are cases that say that if you have federal preemption,  
4 it has to be expressed by Congress. And in fact, Section 363  
5 defers to state law under subsection (f). So we don't have a  
6 situation where federal law trumps state law or anything of  
7 that sort. What we have is res judicata on the ability of this  
8 Court to enter an order under the facts presented back there in  
9 June and July -- as the Court said, 4th of July -- the Court  
10 had the power to go ahead and approve the sale. But just  
11 having the power doesn't mean it's right to do something that  
12 works an injustice. And that's why we're here today. It's an  
13 opportunity, really, in the case of this individual who has no  
14 other way to protect himself or to have recourse in the law to  
15 be able to proceed with his case.

16 And so Your Honor, we respectfully submit that Mr.  
17 Robley should be allowed to proceed with this case. I would  
18 only close by saying I did a little bit of math -- I'm not  
19 really good with these large numbers, but I determined that in  
20 the last quarterly report of GM before -- and the Court refers  
21 to this in its ruling -- before the bankruptcy filing that I  
22 think the amount of contingent liability for product liability  
23 claims was 974 million dollars, which is 1/75,000th of the  
24 value of the New GM. So we're talking about, even though it's  
25 of enormous importance to an individual like Shane J. Robley,

1 we're talking about an amount that is miniscule to GM and New  
2 GM, either Motors Liquidation or to GM, but it's miniscule in  
3 this case; let me put it that way. I feel a little bit like a  
4 mosquito on the back of an elephant. But I'm here. And Your  
5 Honor, that's not to minimize the importance of everything that  
6 has happened, but it is to say that the Court has an  
7 opportunity here to do justice, and we just ask the Court to  
8 take that opportunity and to rule -- rule in denial of the  
9 motion made by General Motors.

10 THE COURT: Thank you. Mr. Novack.

11 MR. NOVACK: Good morning, Your Honor. Barry Novack,  
12 N-O-V-A-C-K, appearing pro hac vice on behalf of Sanford  
13 Deutsch, personal representative of the estate of Beverly  
14 Deutsch.

15 Your Honor, I appreciate the fact that you pointed out  
16 that language from Section 2.3(a)(ix) because that is the very  
17 language that we incorporated in paragraph 3 of our third  
18 amended complaint which brings us here today. I'm not going to  
19 talk about what the New GM did not accept in terms of  
20 liability. I'm going to talk about what they agreed to accept  
21 because I think that brings this case into focus.

22 As I stated in my letter of February 9, 2010, which is  
23 attached as an exhibit, I believe it's Exhibit M or N to the  
24 motion, the section in question says that the New GM will  
25 "accept all liabilities to third parties for death, personal



1 injury, or other injury to persons or damage to property caused  
2 by motor vehicles designed for operation on public roadways  
3 which arise directly out of accidents, incidents, or other  
4 distinct and discrete occurrences that happen on or after the  
5 closing date and which arise from such motor vehicle's  
6 operation or performance." Paragraph 3 of the third amended  
7 complaint brought in the wrongful death action says, "the  
8 events giving rise to this cause of action stem from an  
9 automobile accident that occurred at or near Beverly Boulevard  
10 and Formosa Avenue, Los Angeles, California, and arise directly  
11 from a distinct and discrete occurrence that happened on August  
12 2nd, 2009, namely the death of Beverly Deutsch from injuries  
13 sustained in the accident." It appears from the language where  
14 they accept liability for accidents, incidents, or other  
15 distinct and discrete occurrences that happened after the  
16 creation of New GM is to exclude any claims that were ripe and  
17 could have been brought prior to the creation of the New GM,  
18 and that they will accept all claims that arise after the  
19 creation of the New GM. While it is true that the accident  
20 involving Beverly Deutsch happened two years earlier, she was  
21 in a coma for a long period of time, she died from  
22 complications of the injuries she received, and died on August  
23 2nd, 2009. The language that forms the order using the words  
24 "other distinct and discrete occurrences", we contend, without  
25 any definition of those words in the agreement and order, that

1 the death of Beverly Deutsch arising from injuries that  
2 preceded the creation of New GM, that death was a distinct and  
3 discrete occurrence. Those words, we believe, uniquely allow  
4 the heirs of Beverly Deutsch to bring a wrongful death action,  
5 a new action, a statutory action that did not exist prior to  
6 the creation of the New GM. So we're talking about a unique  
7 set of circumstances, and all we have to look at is the very  
8 language that was agreed to by the New GM, namely, was this an  
9 accident that happened afterwards? No. Was this an incident  
10 that happened afterwards? Perhaps. However, was this a  
11 distinct and discrete occurrence that happened afterwards?  
12 Yes. And because there is no definition of what a distinct and  
13 discrete occurrence is, if within the four corners of the  
14 agreement, we can bring our case into the category of cases  
15 that they have agreed to accept, then the language should be  
16 construed against them and in favor of my client and allow the  
17 wrongful death action that did not exist prior to the creation  
18 of the New GM to proceed. And that is all I have to say on the  
19 subject, Your Honor. Unless the Court has any questions?

20 THE COURT: No, but before you reply, Mr. Karotkin, I  
21 want to take a couple notes.

22 Thank you.

23 MR. NOVACK: Thank you.

24 THE COURT: Mr. Karotkin.

25 MR. KAROTKIN: Thank you, Your Honor. Stephen

1 Karotkin for General Motors, LLC.

2 Let me address Mr. Novat (sic) -- I'm sorry, Novat? --  
3 Novack first, and I think there's actually a very simple  
4 answer, when you look at the language that Your Honor referred  
5 to and that was referred to by counsel. When he refers to a  
6 distinct and discrete occurrence, simply put, it is not a  
7 distinct and discrete occurrence independent of the accident or  
8 incident which took place prior to the closing. It merely  
9 flows from that. And for this to make any sense, it has to be  
10 a distinct and discrete occurrence independent, totally  
11 independent from what happened prior to the closing, which was  
12 when the accident occurred, and I think that that, Your Honor,  
13 is the only explanation of that language that makes sense and  
14 is very clear from the provisions of the MSPA.

15 Now, going back to Dr. Sizemore --

16 THE COURT: Is it, Mr. Karotkin? Or should I or any  
17 other judge conclude that when the extra words "other distinct  
18 and discrete occurrences" were added, they were added for some  
19 reason?

20 MR. KAROTKIN: No, I don't think so. They were added  
21 to cover, perhaps, something other than an accident or incident  
22 that occurred prior to the closing, but they certainly weren't  
23 added to cover something which arose directly from the event  
24 which occurred prior to the closing, Your Honor. That would  
25 not make any sense at all. You can't divorce what happened to

1 Ms. Deutsch from what occurred prior to the closing. It arose  
2 directly from that. It's not an independent or discrete  
3 occurrence.

4 May I proceed?

5 THE COURT: Yes, you may.

6 MR. KAROTKIN: With respect to Dr. Sizemore, I don't  
7 believe that Dr. Sizemore has raised anything to support a  
8 continuation of the lawsuit against General Motors, LLC.  
9 Whether or not -- and I believe this would be true for Mr.  
10 Robley as well -- I think they try to sort of cloud whether or  
11 not they have a right to file a proof of claim at this point or  
12 not, whether there is an independent basis to file a late proof  
13 of claim, but that's not the issue here today, and that can be  
14 addressed at another time.

15 The issue here today is whether or not they can  
16 continue the action as against New GM, and I think that the  
17 facts clearly demonstrate that Dr. Sizemore cannot do that. As  
18 I said, to the extent that Dr. Sizemore believes she was  
19 mislead, to the extent she believes that she received  
20 inconsistent information from people from my firm, which, Your  
21 Honor, we hope is not the case and we expect is not the case,  
22 again, that can be addressed by Your Honor in the context of  
23 whether or not Dr. Sizemore wishes to file a claim. I think,  
24 and I'm not sure, but I think that she did indicate or  
25 certainly did suggest that she did receive notice of the bar

1 date. And notwithstanding that, our files do not reflect that  
2 she filed a proof of claim.

3 With respect to Mr. Robley and Mr. Rutledge's  
4 argument, he acknowledged -- he acknowledged on the record that  
5 General Motors or MLC did not know about his claim at the time  
6 that notice was given of the sale hearing, or for that matter,  
7 at the time of the sale hearing. So under those circumstances,  
8 publication notices, as you found, Your Honor, was appropriate.  
9 Moreover, and again, I think that Your Honor indicated this  
10 again, all of the issues -- all of the issues that he would  
11 have raised in this court had he been given notice were  
12 squarely addressed by Your Honor. His suggestion that Your  
13 Honor did not consider issues of successor liability clearly is  
14 not the case. As you indicated, Mr. Jakubowski and others  
15 raised that issue with you; in fact, Mr. Jakubowski took it up  
16 to Judge Buchwald in the district court. And again, all of the  
17 issues that were raised here, all of the issues as to allegedly  
18 that this claim is just a miniscule part of the assets of New  
19 GM, were raised and rejected by Judge Buchwald. And all of  
20 those issues were raised again before Your Honor.

21 The first we heard that Mr. Rutledge or Mr. Robley  
22 received some correspondence from my office was when he was  
23 standing up here today. None of that is reflected in the  
24 pleadings. And again, Your Honor, to the extent that Mr.  
25 Robley believes he is entitled to file a late proof of claim, I

1 find it a bit curious that they haven't done anything yet. I  
2 find it a bit curious that in January of this year, he was  
3 advised of the fact that the assets had been sold. Again,  
4 nothing happened; he didn't make any effort to file a proof of  
5 claim. And basically what Mr. Rutledge is asking Your Honor to  
6 do is to rewrite -- to rewrite your sale order solely with  
7 respect to Mr. Robley. And we suggest, Your Honor, that that  
8 is completely, completely inappropriate.

9 I'm not sure I understand his request for a stay  
10 pending appeal; that can be addressed at a later time. I think  
11 Your Honor did indicate that you would hold things in  
12 abeyance --

13 THE COURT: Well, I understood him to be asking for  
14 the kind of relief that I had asked you about in your opening  
15 remarks.

16 MR. KAROTKIN: And again, as to the pending appeal,  
17 and to the extent that those are not final, again, we have no  
18 objection to that. But to the extent that he's seeking an  
19 independent stay-pending appeal with respect to whatever ruling  
20 Your Honor may make today, that's a different issue which we  
21 would like to address, if that's the case. And unless you have  
22 any questions, that's all I have to say.

23 THE COURT: No, thank you. Wait -- you have a request  
24 to confer.

25 MR. KAROTKIN: And again, I'd just like to point out

1 one other thing. In Section 2.3(b)(ix) of the MSPA, which is  
2 liabilities retained by Old GM, it specifically says "all  
3 product liabilities arising in whole or in part from any  
4 accidents, incidents, or other occurrences that happened prior  
5 to the closing date". And I think that's consistent with what  
6 I said before in the appropriate interpretation of the section  
7 dealing with assumed liabilities.

8 THE COURT: All right, very good.

9 MR. KAROTKIN: Thank you, sir.

10 THE COURT: Thank you.

11 Any surreply limited to remarks that were made in  
12 reply? Mr. Novack?

13 MR. NOVACK: Yes, Your Honor. With response to -- in  
14 response to what counsel just read, on page 6 of the motion,  
15 quoting from section --

16 THE COURT: The underlying motion, Mr. Novack?

17 MR. NOVACK: Yes, Your Honor.

18 THE COURT: Give me a moment, please. All right.

19 MR. NOVACK: Page 6, paragraph 46, it says, "except  
20 for the assumed liabilities expressly set forth in the MSPA,  
21 none of the purchaser" et cetera, et cetera "shall have any  
22 liability for any claim that arose prior to the closing date,  
23 relates to production of vehicles prior to the closing date, or  
24 otherwise is assertable against the debtor or is related to the  
25 purchased assets prior to the closing date.

1 THE COURT: Give me a moment, please. I'm sorry,  
2 where were you reading?

3 MR. NOVACK: Page 6 of your motion.

4 THE COURT: Did you say paragraph 46?

5 MR. NOVACK: It's -- they're quoting from paragraph 46  
6 of the sale order, I believe.

7 THE COURT: Okay, continue please, Mr. Novack.

8 MR. NOVACK: Thank you, Your Honor. That language has  
9 to be looked at in conjunction with Section 2.3(a)(ix) because  
10 paragraph 46 deals with claims that arose before the creation  
11 of the New GM. Our claim for wrongful death did not arise it,  
12 we did not have an assertable claim, there is no cause of  
13 action for anticipatory wrongful death. So if you look at  
14 paragraph 46 and then look at the language in 2.3(a)(ix), we  
15 have a situation where Beverly Deutsch's death does fall within  
16 the appropriate framework to be brought following the creation  
17 of the New GM.

18 The use of the word "or" is interesting. Counsel  
19 argues that there has --

20 THE COURT: "Or" in 46 or "or" in 2.3(b)(ix)?

21 MR. NOVACK: In 2.3(a)(ix). GM argues that the  
22 occurrence has to be independent. Well, the language is  
23 "accident, incident, or". They're distinct and unique. And  
24 the word "occurrence". Occurrence is something which happens.  
25 We have an occurrence, something which happened after the New



1 GM was created. So in order to give meaning to this language,  
2 and I note that GM's counsel did not give the Court an example  
3 of what would constitute a distinct and discrete occurrence  
4 that happened afterwards. I'm giving the Court an example.  
5 Beverly Deutsch is an example of a discrete -- distinct and  
6 discrete occurrence that happened afterwards. Doesn't violate  
7 the language. In fact, it's in conformance with the language,  
8 and it's consistent with the intent of what types of claims  
9 should be covered by the New GM when you look in terms of what  
10 claims are not going to be covered. Claims that preexisted do  
11 not continue on. We have a totally new, independent claim that  
12 did not exist at law or in fact until after the New GM was  
13 created. That claim falls within the distinct and discrete  
14 occurrence section.

15 Had they merely said "accident", we would not have an  
16 accident, a new accident that occurred. They could have said  
17 "accident that happened afterwards", and that would cover  
18 somebody who was injured before and died afterwards. But they  
19 didn't do that. They expanded what they will accept. They  
20 will accept accidents that happened afterwards; we don't have  
21 that. They will accept incidents that happened afterwards;  
22 questionable, incident is not defined. And they will accept  
23 distinct and discrete occurrences that happened afterwards. We  
24 have such a situation. We don't have to twist words. We don't  
25 have to modify agreements, we don't have to look for

1 exceptions. We merely have to apply the very language upon  
2 which they have accepted liability, and Beverly Deutsch's case  
3 falls within the four corners of that language. Thank you,  
4 Your Honor.

5 THE COURT: All right, very good. Dr. Sizemore?

6 DR. SIZEMORE: I just want to impose one more time,  
7 and I thank you for your patience. I -- the only thing I've  
8 come to ask for is time. And I understand if there were any  
9 irregularities, I am completely agreeable to amend those  
10 irregularities. But I would ask for the time to be able to do  
11 that. I take responsibility for all of my own actions, but the  
12 only reason I elaborated on the activities that had happened  
13 during my proceedings was to persuade you that I don't think  
14 I'm the only one to blame for the irregularity that happened.  
15 So extending me the time is only because I just don't think it  
16 was all my fault.

17 But -- and the proof of claim form was mentioned to me  
18 on or about December 16th by -- during a phone conversation  
19 with Ms. Benfield which I have documented in my cell phone.  
20 When she mentioned the proof of claim form, she mentioned that  
21 the deadline for me to file that was November 29th. And she  
22 had had conversation with me prior to November 29th, some time  
23 in October -- I'd have to check my records -- and never  
24 mentioned the proof of claim form. So if that were still  
25 available, I would have done that.

1 And the other thing I wanted to ask the Court -- if  
2 it's improper, I apologize -- but I wanted to know if the  
3 bankruptcy laws prohibited action against the Old or New GM  
4 regarding laws pertaining to negligence or fraud or any  
5 accusation in those departments. Do the same bankruptcy laws  
6 apply to tort actions in those areas, so that I can avoid  
7 having to come back if I were to consider filing an action.

8 THE COURT: Well, forgive me, Dr. Sizemore. I can't  
9 give you legal advice. I can rule on issues that are before  
10 me. And that's what I'm going to do.

11 DR. SIZEMORE: Okay.

12 THE COURT: Thank you. Okay, Mr. Rutledge, did you  
13 have any final surreply? Again, limited to anything that Mr.  
14 Karotkin said the second time around.

15 MR. RUTLEDGE: Your Honor, with respect to the  
16 argument put forth by GM's counsel, I first want to take  
17 exception to the statement that Dr. Sizemore or Mr. Robley  
18 cloud the issue with respect to filing a proof of claim or any  
19 conclusions -- excuse me -- that might be drawn in reference to  
20 what we're discussing today regarding the timing of filing a  
21 proof of claim, but only to say that if that were a route that  
22 were available, it would -- it would appear, Your Honor, that  
23 it would be working counter to the arguments that we're putting  
24 forth with the Court today, but certainly we leave open --

25 THE COURT: Well, lawyers do that to each other all

1 the time, I think, don't they, Mr. Rutledge?

2 MR. RUTLEDGE: Pretty much, Your Honor, I would agree.  
3 But secondly, more importantly, the contention that the Robley  
4 issues were decided by Judge Buchwald in the matter that was  
5 taken to the district court on appeal, I did read the decision  
6 of Judge Buchwald and find that, as a matter of fact, she  
7 deliberately did not rule on the substantive issues of that  
8 appeal. She deliberately found that Section 363(m) of the  
9 Bankruptcy Code controlled and that the fact that the  
10 appellants had not come before this Court and asked for -- or,  
11 obtained a stay foreclosed that appeal. Whether that -- I  
12 believe the decision on that was April 13th of this year. And  
13 whether that, in turn, will be appealed, I think is still an  
14 open issues. But I would simply say that on the record of the  
15 decisions rendered either in this court or by Judge Buchwald in  
16 the district court, there is no specific finding or ruling on  
17 the issue of the exceptions to the general rule when the assets  
18 can pass free and clear of liens and encumbrances. And there  
19 is no ruling with respect to our contentions specifically  
20 related to the product liability character of our cause of  
21 action. So I think it would be a misunderstanding to say that  
22 that was the case.

23 And finally, with respect to comments of counsel  
24 pertaining to notice, certainly there was a certificate of  
25 notice filed by counsel for GM. Certainly, there was notice by

1 publication. But the facts here are really identical to the  
2 facts that were in the Savage Arms case. It doesn't really  
3 matter why the person in Robley's situation didn't get notice.  
4 What is of most importance was that there was a failure to meet  
5 the requirements of procedural due process set forth in Mullane  
6 v. Central Hanover Bank and Trust. And procedural due process  
7 or finding that it fails to meet that standard does not require  
8 that we prove that GM intentionally left Mr. Robley out in the  
9 cold. It simply calls for an analysis whether the notice that  
10 was given was reasonably calculated to reach him and give him  
11 an opportunity to appear and respond. And we simply say that,  
12 in his case, it does not meet the procedural due process  
13 requirement.

14 The other issues that Mr. Karotkin raised on his  
15 rebuttal, Your Honor, we submit are -- to say that we're trying  
16 to go back and rewrite the agreement or trying to ask the Court  
17 to modify its order would be a misstatement. What we're  
18 asking, Your Honor, is Section 7.1 of the agreement says that  
19 the liabilities of persons like Robley would be barred to the  
20 extent permitted by law. So the agreement is all we need from  
21 the point of view of stating his position. And if you read the  
22 provisions of the order, the order itself says, "except as  
23 expressly permitted or otherwise provided by the MSPA or this  
24 order", and then it goes on to state the general proposition  
25 that claims are barred. So that exception, Your Honor, is

1 relevant in Mr. Robley's case. The fact that there is a  
2 failure to meet the minimum requirements of procedural due  
3 process, I think it's difficult for counsel to accept that, but  
4 that fact exempts Mr. Robley from the constraints that GM --  
5 New GM tried to build into the sale agreement. And the  
6 consequences of a failure to meet substantive -- or, procedural  
7 due process in a bankruptcy case are well stated in the Savage  
8 Arms case and the same results that pertain there should  
9 pertain in the case of Mr. Robley.

10 THE COURT: All right, thank you.

11 All right, folks, I want you to take an early lunch, a  
12 long lunch, and to be back here at 1 o'clock p.m. at which time  
13 I will issue a ruling, or as soon as practical thereafter.

14 We're in recess.

15 (Recess from 11:13 a.m. until 1:32 p.m.)

16 THE COURT: I apologize for keeping you all waiting.

17 In these jointly administered cases under Chapter 11  
18 of the Bankruptcy Code, General Motors, LLC, or New GM as we  
19 commonly call it, moves for an order of this Court, A,  
20 enforcing a previous order of this Court, B, enjoining certain  
21 plaintiffs from prosecuting or otherwise pursuing certain  
22 claims asserted against New GM, and C, directing those  
23 plaintiffs to promptly dismiss New GM from pending litigation  
24 with prejudice.

25 The motion is granted in substance, subject to the

1 refinement discussed below, to the extent it would affect those  
2 who did not object, Dr. Terrie Sizemore, Shane J. Robley, and  
3 Sanford Deutsch, to the extent Mr. Deutsch asserts claims other  
4 than his wrongful death claim. The motion is continued for a  
5 subsequent clarification of the record, and if necessary, an  
6 evidentiary hearing, concerning the claims asserted by Mr.  
7 Deutsch for his wife's wrongful death after the closing, and in  
8 particular, to ascertain the exact language in the final form  
9 of the ARMSPA and the reasons for any changes. The following  
10 are the bases for this determination.

11 After sufficient notice -- and I'll come back to the  
12 matter of notice -- and upon an evidentiary record, an  
13 extensive one, on July 5th, 2009, I entered an order  
14 authorizing the sale of substantially all of the debtors'  
15 assets to the predecessor of New GM pursuant to an amended and  
16 restated master sale and purchase agreement. We commonly call  
17 that document the ARMSPA. Pursuant to the ARMSPA and the  
18 related sale order, New GM agreed to assume certain liabilities  
19 of the debtors. The ARMSPA enumerated with substantial but not  
20 total clarity which liabilities would be assumed by New GM, and  
21 it made clear that all other liabilities would be retained by  
22 the debtors. With respect to product liability claims, the  
23 form of the ARMSPA dated "as of June 26th, 2009" provided in  
24 Section 2.3(a)(ix), "The assumed liabilities shall consist only  
25 of the following liabilities of sellers." And I'm omitting.

1 "(ix) All liabilities to third parties for death, personal  
2 injury, other injury to Persons or damage to property caused by  
3 motor vehicles designed for operation on public roadways or by  
4 the component parts of such vehicles and in each case  
5 manufactured, sold, or delivered by sellers (collectively  
6 "Product Liabilities"), which arise directly out of" and I'm  
7 emphasizing, "accidents, incidents, or other distinct or  
8 discrete occurrences that happened on or after the closing date  
9 and arise from such motor vehicle's operation or performance."  
10 It's the end of the lengthy quote. By contrast, a first  
11 amendment to amended and restated master sale and purchase  
12 agreement had a different language for Section 2.3(a)(ix)  
13 stating, with respect to the language I just emphasized,  
14 "accidents or incidents" that happen on or after the closing  
15 date.

16 Now, in oral argument on this motion, I asked whether  
17 the language that had been used in the briefs by each of the  
18 parties, which was the latter language, was the wrong language,  
19 in terms of describing what the parties, Old GM and New GM, had  
20 agreed to, and either out of good manners or confusion, nobody  
21 corrected me, or perhaps I was corrected, but in a way so  
22 subtle that I missed it. But when I looked back at that  
23 language over the lunch hour, I now wonder whether you all got  
24 it right and that the second language I just read trumps the  
25 first. But I have no evidence in the record of the exact order



1 of these seemingly different contractual provisions or  
2 especially the reasons for the difference. And I think that  
3 the difference could possible change the result.

4 However, for litigants other than the Deutsch family  
5 where Ms. Deutsch's injury was before the sale and her death  
6 came after, and in all other respects, the facts are much  
7 clearer and require neither supplementation nor discovery. The  
8 sale order makes clear that New GM was purchasing the assets  
9 free and clear of all liens, claims, encumbrances, and other  
10 interests including any rights or claims based on any theory of  
11 successor transferee, derivative or vicarious liability, or de  
12 facto merger or continuity of any kind or character. These  
13 provisions in the sale order were not slipped into the order  
14 with stealth but were hotly contested before me. One lawyer,  
15 in particular, Steve Jakubowski, litigated them vigorously and  
16 at length both before me and on appeal. I dealt with the  
17 successor liability issue extensively in my written decision,  
18 and the appeal by Mr. Jakubowski from that decision was  
19 dismissed by the district court where my decision was also  
20 affirmed.

21 Moreover, the sale order contained broad provisions  
22 prohibiting and enjoining any action or proceeding by any  
23 individual or entity to enforce or collect any claim against  
24 New GM on account of any claim against the debtors other than  
25 with respect to the assumed liabilities.

1           Since the debtors and New GM closed, pursuant to the  
2       ARMSPA on July 10, 2009, a date that I'll refer to as the  
3       closing date, six lawsuits have been filed against New GM  
4       asserting product liability claims based on accidents or  
5       incidents that occurred prior to the closing date. New GM has  
6       informed these plaintiffs of its position that the provisions  
7       in the ARMSPA and the sale order preclude them from pursuing  
8       their claims, but those plaintiffs have failed to dismiss their  
9       lawsuits against New GM. As a result of the plaintiffs'  
10      refusal or failure, New GM brought this motion before me  
11      seeking to enforce the sale order.

12           Of the six plaintiffs named in New GM's motion, three  
13      have filed formal objections, those objectors being Shane  
14      Robley, Terrie Sizemore, and Sanford Deutsch. Each objection  
15      presents somewhat different arguments, and I'll address them in  
16      order of increasing difficulty.

17           Turning first to dr. Sizemore's objection, she argues  
18      that New GM must remain a defendant in litigation that she  
19      commenced on a wholly prepetition accident until she is able to  
20      complete discovery on certain matters that have been fleshed  
21      out only in part. But her argument is, of course, contrary to  
22      the broad language in the sale order that enjoins any action or  
23      other proceeding in any judicial proceeding taken against New  
24      GM on account of any claim against the debtors other than  
25      that -- than assumed liabilities as that term is defined in the

1 sale order. So we must look to the ARMSPA, rather than the  
2 issues relating to the underlying claims, to ascertain the  
3 extent, if any, to which the ARMSPA covers her claims as an  
4 assumed liability.

5 That's a matter as to which she made no substantive  
6 arguments. I find no fault with her having acted as she did,  
7 especially in light of the fact that she's a pro se litigant,  
8 and certainly I wouldn't think of imposing sanctions on her,  
9 and I do not do so now. But the issue before me is,  
10 nevertheless, whether her lawsuit must be brought to a halt, or  
11 putting it differently, whether she can't bring it -- continue  
12 it anymore, and the answer is that she can't continue it  
13 anymore. That's especially so since the discovery she seeks  
14 relates to the merits of her claims as contrasted to the  
15 content or intent of the ARMSPA whose terms defined the extent  
16 to which she could or could not properly proceed.

17 Without dispute, Dr. Sizemore was injured in a  
18 prepetition accident. As relevant here, the ARMSPA  
19 unequivocally provides that for claims to have been assumed by  
20 New GM when they are based on an accident taking place at some  
21 point in time, those accidents to be allowed to be assumed by  
22 New GM must have taken place on or after the closing date. Dr.  
23 Sizemore simply doesn't qualify under that language.

24 Since Dr. Sizemore's claims result from an accident  
25 prior to the closing date, she might have a prepetition claim

1 against Old GM, an issue that I haven't been asked to decide  
2 today and which I'm not currently deciding. But her claim, if  
3 any, is certainly not an assumed liability. Therefore, Dr.  
4 Sizemore will be stayed from taking any action against New GM  
5 on account of or arising from her preclosing date accident,  
6 including for the avoidance of doubt, continuing litigation  
7 against New GM for the purpose of conducting discovery on any  
8 issue.

9 Turning next to the objection filed by Shane Robley,  
10 Mr. Robley argues that New GM's motion should be denied  
11 because, one, Mr. Robley was deprived of procedural due process  
12 because he didn't receive actual notice of the sale motion that  
13 led to the sale order; two, the sale to New GM did not convey  
14 those assets free and clear of his product liability claim; and  
15 three, that selecting July 10, 2009 as the closing date was  
16 arbitrary, capricious, and unjust, or, putting it somewhat  
17 differently, that I should force New GM to assume his and  
18 perhaps other liabilities by reason of my notions of equity.

19 New GM disputes each of those contentions, and on the  
20 facts and law here, I must agree with New GM. It's agreed by  
21 all concerned that Mr. Robley didn't get mailed a personal  
22 notice of the 363 hearing that resulted in the sale order, very  
23 possibly because as of that time, Mr. Robley had not sued  
24 either Old GM or New GM yet. It's also agreed that Old GM and  
25 New GM did not give personal notice of the 363 hearing to all

1 of the individuals who had ever purchased a GM vehicle, and  
2 instead, supplemented its personal notice to a much smaller  
3 universe of people by notice by publication. It's also  
4 undisputed that I expressly approved the notice that had been  
5 given in advance of the 363 hearing including the notice by  
6 publication, which I found to be reasonable under the  
7 circumstances.

8 Mr. Robley relies on the First Circuit's decision in  
9 Western Auto Supply Company v. Savage Arms, Inc., 43 F.3d 714  
10 (1st Cir, 1994), in which the First Circuit Court of Appeals,  
11 speaking through Judge Conrad Cyr, a highly respected former  
12 bankruptcy judge, agreed with the district judge that the  
13 bankruptcy court had erred when the bankruptcy court enjoined  
14 prosecution of product line liability actions brought against  
15 the purchaser of the debtor's business for lack of notice. But  
16 the critically important distinction between this case and the  
17 Savage Arms case is that here, and not there, notice was also  
18 given by publication. We all agree that due process requires  
19 the best notice practical, but we look to the best notice  
20 that's available under the circumstances. Here, under the  
21 facts presented in June of 2009, GM didn't have the luxury of  
22 waiting to send out notice by mail to hundreds of thousands of  
23 GM car owners, and instead gave notice by publication, which I  
24 approved. In Savage Arms, the debtor "conceitedly made no  
25 attempt to provide notice by publication" (43 F.3d at 721) and

1 the notice that was given was never determined, "appropriate in  
2 the particular circumstances" (Id. at 722). In other words,  
3 the First Circuit found it significant that the debtors in  
4 Savage Arms didn't do the very thing that was done here.

5 As I've indicated, I've already determined that notice  
6 was appropriate in the particular circumstances, and provided  
7 for that in an order that entered on July 5th, 2009 that  
8 remains valid today. Moreover, it's obvious that the notice  
9 was, indeed, appropriate and did what it was supposed to do  
10 because it permitted Mr. Jakubowski, in particular, to make  
11 effectively and well the very arguments that Mr. Robley's  
12 counsel would, himself, have to make either now or back then  
13 and which I then considered and rejected.

14 I've already ruled on the arguments dealing with the  
15 underlying propriety of a free and clear order cutting off  
16 product liabilities claims as set forth in my opinion published  
17 at 407 B.R. 463. Until or unless some higher court reverses my  
18 determination -- and neither of the district courts who've  
19 ruled on that determination have yet done so (see 2010 W.L.  
20 1524763 and 2010 W.L. 1730802) -- they're res judicata, or at  
21 least res judicata subject to any limitations on the res  
22 judicata doctrine requiring a final order. And of course,  
23 they're stare decisis. I found these arguments to be  
24 unpersuasive last summer, and considering the great deal with  
25 which my previous opinion dealt with those exact issues, I am

1 not of a mind, nor do I think I could or should, come to a  
2 different view on those identical issues today.

3 Lastly, of course, I sympathize with Mr. Robley's  
4 circumstances, just as I've sympathized with each of the tort  
5 victims who have been limited to the assertion of prepetition  
6 claims against Old GM. But I'm constrained to act in  
7 accordance with the law, and can't substitute my own notions of  
8 fairness, equity, or sympathy for what the law requires me to  
9 do. That's especially so since choosing a closing date  
10 required some date to be chosen and there's no evidence in the  
11 record to lead me to believe that the closing date was done in  
12 any way to particularly target Mr. Robley.

13 Finally, turning to Mr. Deutsch, Mr. Deutsch,  
14 understandably, doesn't argue that the personal injury claims  
15 he might otherwise be able to assert are prepetition claims.  
16 But he argues that because Ms. Deutsch died after the closing,  
17 her resulting wrongful death claim didn't come into being until  
18 that time. And he further argues that the death of Ms. Deutsch  
19 constituted an incident separate and apart from an event upon  
20 which the cause of action accrued. Thus, he argues, that while  
21 the wrongful death claim wasn't assumed because of an  
22 "accident" taking place after the closing, it was an "incident"  
23 or especially a "distinct and discrete occurrence" as appearing  
24 in some of the versions of the ARMSPA. However, the problem I  
25 have is that the record is now confused as to which version of

1 the ARMSPA I should be looking at, and especially, where there  
2 are differences, what are the reasons for those differences?

3 If the language with "other distinct and discrete  
4 occurrences" was added, it would broaden the universe of claims  
5 that were assumed. Conversely, if it were deleted, it would  
6 narrow them. I thought, during the course of oral argument,  
7 that the language was added, but now I'm not so sure, and I  
8 especially don't know the reasons for the changes. And, so far  
9 as I can tell, I received no evidence with respect to the  
10 changes, or especially the reasons for them.

11 In any event, "incidents" remains undefined, and it  
12 obviously must mean something different from "accidents", which  
13 is what we almost always think of as causing product liability  
14 claims. Also, a death is at least seemingly an incident by  
15 many common uses of that term. It's obviously quite different  
16 than an accident, and I have to assume that "incidents" was  
17 included to say something more than use of the word "accidents"  
18 would say. There's a principle of law under the State of New  
19 York whose laws apply to the ARMSPA that contracts are  
20 construed, when possible, as to give effect and meaning to  
21 every word and expression contained in an agreement. See, for  
22 example, Atwater & Company v. Panama Railroad Company, 246 NY  
23 519, Benvenuto v. Rodriguez, 279 A.D. 162. So I think I or any  
24 other Court would be reluctant to disregard whatever was in the  
25 agreement besides the word "accident", and we'd all have to



1 focus on whatever supplementary words there were in any  
2 analysis going forward.

3 We all agree, or should agree, that when the cause of  
4 action came into being under California law is irrelevant.  
5 What does matter is what the ARMSPA says it covers, but at this  
6 point, I don't have that answer with sufficient certainty to  
7 decide an issue that's obviously of very great importance to  
8 the Deutsch family, and I can't decide this aspect of the  
9 motion on the existing record. Accordingly, the portion of the  
10 motion that deals with Mr. Deutsch's wrongful death claim will  
11 be severed for supplementation of the record. The remainder of  
12 the motion will be granted. However, though I, of course,  
13 think I got it right when I issued the successor liability  
14 portion of my early rulings, I'm going to stay, rather than  
15 require dismissal of, the litigation brought by the three  
16 objectors insofar as I've ruled on their actions so that the  
17 objectors won't be prejudiced if my earlier rulings, which now  
18 are good law, are modified in any respect material to their  
19 claims. If, after a final order emanating out of the appellate  
20 courts, my earlier rulings remain good law, and prepetition  
21 claims then still can't be brought against New GM, New GM will  
22 be free, if it wishes, to come back to me with a request that  
23 they be dismissed, which, as I understand is the third prong of  
24 GM's motion before me today.

25 With all of that said, I think it would be helpful if

1 Old GM reconsider whether it will consent to any of the  
2 objectors filing a late proof of claim, and that it likewise  
3 consider doing the same for any others who were the subject of  
4 this motion and who may also have been told that they shouldn't  
5 be proceeding with their lawsuits without also being told of  
6 the need to file proofs of claim. If Old GM is unwilling to  
7 consent to that, persons who had those conversations may, of  
8 course, file their own motions for leave to file late claims,  
9 or they may file them and then defend any motions to dismiss or  
10 expunge those claims if based on tardiness grounds.

11 Mr. Karotkin and Mr. Novack, you're to agree with each  
12 other on a timetable for supplementing the record and for  
13 teeing up the remaining issue. Mr. Karotkin, I would like you,  
14 if you would, to settle an order in accordance with this ruling  
15 for the elements of the motion that were granted.

16 MR. KAROTKIN: Can I ask a question, sir?

17 THE COURT: Yes, sir.

18 MR. KAROTKIN: Just so I'm clear about your staying of  
19 dismissal, does that mean, Your Honor, that the plaintiffs can  
20 actually proceed with the litigation, or is the status quo to  
21 be maintained? I'm not exactly sure what you had in mind. Or  
22 perhaps --

23 THE COURT: When I say stay -- forgive me for  
24 interrupting you, Mr. Karotkin.

25 MR. KAROTKIN: Sorry.

1 THE COURT: When I say stay, I mean that each  
2 litigation against New GM that was a subject of your motion  
3 must come to a full stop. They don't have to file a notice of  
4 dismissal, but those litigations can't go anywhere, just as if  
5 they were in automatic stay.

6 MR. KAROTKIN: Okay.

7 THE COURT: If my earlier decision ultimately is  
8 affirmed -- or, actually, the converse is a better way of  
9 saying it. If it isn't altered on appeal after all appeals  
10 have been exhausted, if New GM wants to come back to me for a  
11 supplemental order that those actions that are then stayed be  
12 dismissed, my ruling's without prejudice to New GM making any  
13 such motion. But those motions are to go nowhere until or  
14 unless my earlier ruling is modified in some way as it affects  
15 the successor liability issue.

16 MR. KAROTKIN: You mean those actions, not the  
17 motions.

18 THE COURT: I'm wondering if I misspoke.

19 MR. KAROTKIN: I think you said, if I may, Your Honor,  
20 "those motions should not go forward". I think you meant those  
21 actions --

22 THE COURT: Yes.

23 MR. KAROTKIN: -- or those lawsuits.

24 THE COURT: Correct. That's what I meant.

25 MR. KAROTKIN: All right, thank you, sir.

1 THE COURT: Okay, anything else anybody? Yes, Doctor.

2 DR. SIZEMORE: I apologize. I understand that you  
3 want me to stop the product liability action. Does that --  
4 there are two actions in Medina County. One is the product  
5 liability --

6 THE COURT: Everything must come to a stop.

7 DR. SIZEMORE: Even the action for discovery?

8 THE COURT: Yes.

9 DR. SIZEMORE: Okay.

10 THE COURT: There are no sanctions for anything that's  
11 happened before, but everything must come to a full stop.

12 DR. SIZEMORE: By when?

13 THE COURT: I can give you a reasonable time to  
14 comply. How much time do you need to bring them to a stop?

15 DR. SIZEMORE: Eight days.

16 THE COURT: I don't think eight days will be a  
17 problem. Mr. Karotkin?

18 MR. KAROTKIN: No, sir, that's fine.

19 THE COURT: That's fine.

20 Yes, sir?

21 MR. NOVACK: If I heard Your Honor correctly, you said  
22 was granted as to Sanford Deutsch as an individual. Sanford  
23 Deutsch as an individual in the third cause of action -- excuse  
24 me, in the third amended complaint has not brought claims  
25 against the New GM. His individual claim was for loss of

1 consortium which was asserted against all defendants except the  
2 New GM, so I do not believe in that regard there is any need  
3 for dismissal with respect to Mr. Deutsch as an individual.  
4 His sole capacity vis-a-vis the New General Motors is as the  
5 personal representative of the estate on behalf of the wrongful  
6 death claims.

7 THE COURT: Fair enough, and I think what it might be  
8 helpful for you to do is to put your noodle together with Mr.  
9 Karotkin so that the facts as you've described them and the  
10 spirit of my order are reconciled. The underlying concept was,  
11 first, although I didn't speak to it, I had assumed that you  
12 can go against anybody other than Old GM and New GM, and that  
13 the issue that you had raised that I thought was one of  
14 difficulty was for the wrongful death claim that arose when Ms.  
15 Deutsch died, but that any other claims you had that you could  
16 have asserted earlier would have to be stayed at least until  
17 the appellate courts act differently -- that you had asserted  
18 against New GM would have to be stayed. And you're nodding.  
19 Are we -- I gather we're on the same page?

20 MR. NOVACK: Yes, we have not asserted any claims  
21 against New GM except wrongful death claims.

22 THE COURT: Oh, okay. And that one is what I need  
23 further help from you folks on. I would like -- I won't order  
24 it without an opportunity for each side to be heard, but I  
25 would like you to put that on hold until we can get this sorted

1 out before me.

2 MR. NOVACK: I'm sorry? To put --

3 THE COURT: I would like the issue that I couldn't  
4 decide today to be put on a temporary hold until I can rule on  
5 the remaining issue. But I will hear argument from you and Mr.  
6 Karotkin on that if you think that would prejudice you in some  
7 material way. In other words, on the one issue that I haven't  
8 ruled on yet.

9 MR. NOVACK: I apologize for not following the Court.  
10 I thought that the only issue that relates to Mr. Deutsch is  
11 whether or not he is able, on behalf of the estate, to bring a  
12 wrongful death claim for the death that arose after the  
13 creation of the New GM, which would depend upon the  
14 interpretation of whatever would be the relevant language,  
15 which is still subject to some uncertainty that we are going to  
16 clarify. I thought that was the --

17 THE COURT: Exactly.

18 MR. NOVACK: Okay.

19 THE COURT: And what I'm saying is until I can rule on  
20 that remaining issue, my tentative, California-style, is that I  
21 would like your action in California on that issue to remain in  
22 a holding pattern until the open issues can be determined.

23 MR. NOVACK: Okay, so that would mean, as far as  
24 California is concerned, that there would be no discovery  
25 either to or from the New GM in that wrongful death action

1 until this matter is resolved.

2 THE COURT: Yes.

3 MR. NOVACK: Yes.

4 THE COURT: If you want to be heard on that -- if  
5 there's some material prejudice to you, I'll hear that, but  
6 that's what I would prefer to do.

7 MR. NOVACK: Let me just briefly address the issue.  
8 There is outstanding discovery as to GM on that issue with  
9 respect to certain protocols and testing. Some of that  
10 discovery can be had from codefendants such as Autoliv and  
11 Takata, and I have agreed to a protective order as to them  
12 which may reveal the same documentation that GM would have  
13 given us. There may be some documentation that those two  
14 defendants do not have that only GM has, and I would have no  
15 way of getting that except against GM. If GM is no longer  
16 going to be a party, New GM, I would have to do third-party  
17 discovery as against the New GM for that material. If they are  
18 a party, then obviously, the manner by which I can obtain that  
19 information is relieved.

20 I would anticipate, or hope at least, that the  
21 remaining issue for Your Honor to consider would be resolved  
22 before the need or the dire need for any discovery against  
23 GM -- the New GM that I could not get against the other  
24 defendants, so I have no problem, currently, with staying --  
25 having a mutual stay agreement or an order for mutual stay as

1 to discovery between plaintiff and the New GM until Your Honor  
2 issues a definitive ruling concerning the remaining issue on  
3 the contract.

4 THE COURT: Um-hum. Mr. Karotkin, do you want to  
5 weigh in on this?

6 MR. KAROTKIN: Do you want me to approach?

7 THE COURT: It's always as helpful for a guy as tall  
8 as you.

9 MR. KAROTKIN: I think what counsel said is that he's  
10 okay with a mutual stay remaining in effect pending your  
11 determination. Hopefully that will be done rather  
12 expeditiously, and I guess if it becomes an issue in terms of  
13 the discovery he needs, if this takes longer than we expect,  
14 then either we can work it out with counsel or we can come back  
15 to Your Honor.

16 THE COURT: You know what I think I'd like to have you  
17 guys do on this, see if you can come up with a stip or consent  
18 order papering any deal that you guys have.

19 MR. KAROTKIN: Okay.

20 THE COURT: If, and I suspect that it's unlikely, you  
21 agree to disagree, then you can set it up via conference call  
22 that I can deal with it on, but somehow, I have a sense that  
23 the two of you folks are going to resolve it satisfactorily  
24 without me needing to get involved.

25 MR. KAROTKIN: I certainly expect we will be able to



1 do that.

2 THE COURT: Okay.

3 MR. KAROTKIN: Thank you, sir.

4 THE COURT: Fair enough. And Mr. Novack, except for  
5 evidentiary hearings, I will give you permission, if you want  
6 to avail yourself of it, to appear by telephone -- actually,  
7 that's for everybody who is not here in New York City. I'll  
8 give you permission to appear by telephone and without having  
9 to bring local counsel into the courtroom with you unless you  
10 want to.

11 MR. NOVACK: Thank you. I appreciate that, Your  
12 Honor. And just one point of clarification, if I may.

13 THE COURT: Yes.

14 MR. NOVACK: What time frame would Your Honor -- in  
15 terms of Your Honor's schedule, what time frame would Your  
16 Honor like for us to work out a briefing schedule with respect  
17 to the remaining issue on the Deutsch case.

18 THE COURT: I'd like you to agree with Mr. Karotkin on  
19 that, and again, paper it by a stip or consent order. If it's  
20 reasonable, I'm going to approve it. Whatever you guys agree  
21 upon, as long as it's not pushing this issue way back, will be  
22 fine with me.

23 MR. NOVACK: Thank you, Your Honor.

24 THE COURT: Very well. Okay.

25 Yes, sir, Mr. Rutledge.

1 MR. RUTLEDGE: Yes, Your Honor, I just want to make  
2 sure that I understand my part of this. We will take no  
3 further action in the case in the Western District of Tennessee  
4 but the Court is holding the requested relief in the motion in  
5 abeyance pending the opportunity to appeal the matters that we  
6 have brought before the Court today. Do I have that correct?

7 THE COURT: I think you did, but I'd rather say it my  
8 way. If it weren't for the fact that the appeal that Mr.  
9 Jakubowski brought is, to my understanding, not yet to a final  
10 end, and that he may have the right to go to the circuit, or  
11 maybe he's already at the circuit -- and one of my problems is  
12 that I don't always know what happens to stuff that I issue  
13 after it has gone up -- your action is stayed but not dismissed  
14 until Mr. Jakubowski's action comes to an end.

15 There is a separate right of appeal which could be of  
16 relevance, which is you have the right to appeal my decision  
17 which, unfortunately, is against you. Your time to appeal that  
18 order is, of course, a different time to appeal, and that will  
19 run from the time of entry of the order that I told Mr.  
20 Karotkin to prepare, and not from the time of this dictated  
21 decision. Not from today.

22 MR. RUTLEDGE: That's my question, Your Honor. So we  
23 will take no further in the case against New GM, but we do have  
24 the opportunity to pursue an appeal from the decision today,  
25 and also to await the course of appeal that is ahead of us and

1 that Mr. Jakubowski possibly is pursuing -- I think that's in  
2 the Campbell claim, as I recall.

3 THE COURT: I think you're right. You have the right  
4 to appeal -- and I think it's an appeal; it may be a motion for  
5 leave to appeal; I'm not focusing on that; that's a district  
6 court issue, not my issue -- from my order to the District  
7 Court of the Southern District of New York, and I can't give  
8 you legal advice, but I think you have fourteen days to do that  
9 from the time of entry of the order that Mr. Karotkin's going  
10 to prepare and which you have the right to comment on, if you  
11 choose to. Assuming that my order is entered and remains in  
12 place, I'm going to expect the -- is it in the Western District  
13 of Tennessee?

14 MR. RUTLEDGE: That is correct, Your Honor.

15 THE COURT: In Memphis, or --

16 MR. RUTLEDGE: In Memphis, yeah.

17 THE COURT: I expect that until and unless my order is  
18 reversed, my order will be complied with, and if the Campbell  
19 action appeal turns out to be successful, if you can't get  
20 agreement from Mr. Karotkin as to what to do, you can come back  
21 to me from relief in that regard. I would expect you, though,  
22 Mr. Rutledge, that even before Mr. Karotkin's order is entered,  
23 that you not do anything that if that order had been entered,  
24 would prohibit.

25 MR. RUTLEDGE: Your Honor, we have not taken any

1 action. There's only been a scheduling order that was issued  
2 by the Court, and I will take no further action. But I did  
3 want to be clear about what appeals the Court was talking about  
4 with regard to the holding a dismissal in abeyance pending  
5 appeal. And I think I understand it, now, Your Honor.

6 THE COURT: Yeah, because it's been subject to a  
7 double entendre, I certainly understand the questions.

8 MR. RUTLEDGE: Thank you, Your Honor.

9 THE COURT: Okay. Anything else? Anybody? Okay,  
10 thank you very much, folks. Have a good day.

11 MR. KAROTKIN: Thank you, Your Honor.

12 (Proceedings concluded at 2:14 PM)

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

RULINGS

Page Line

Pro Hac Vice Motion for 7 7

Barry Novack Granted

Pro Hac Vice Motion for 6 20

Roger Rutledge Granted

Motion of General Motors, 64 11

LLC for Entry of an

Order Enforcing 363 Sale

Order Granted with

Respect to Objections

Made by Mr. Robley and

Dr. Sizemore, Granted In

Part with Respect to Mr.

Deutsch

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

Dena Page

Digitally signed by Dena Page  
DN: cn=Dena Page, c=US  
Reason: I am the author of this  
document  
Date: 2010.06.02 16:37:51 -04'00'

Dena Page

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: June 2, 2010